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April 26, 2010

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

ENTERED  
Office of Proceedings  
APR 26 2010  
Part of  
Public Record

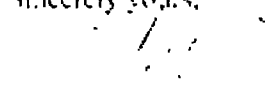
RE: Docket No. AB-6 (Sub-No. 470X), *BNSF Railway Company—Discontinuance of  
Trackage Rights Exemption—in Peoria and Tazewell Counties, IL*

Dear Ms. Brown:

The Toledo, Peoria & Western Railroad Co. is e-filing the attached Petition for Leave to Respond.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,

  
Louis E. Gitomer  
Attorney for Toledo, Peoria & Western Railroad Co.

Attachment

BEFORE THE  
SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
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Public Record

STB Docket No. AB-6 (Sub-No. 470X)

BNSF RAILWAY COMPANY—DISCONTINUANCE OF TRACKAGE RIGHTS  
EXEMPTION—IN PEORIA AND TAZEWELL COUNTIES, IL

TOLEDO, PEORIA & WESTERN RAILROAD CO. PETITION FOR LEAVE TO RESPOND

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Attorneys for. TOLEDO, PEORIA & WESTERN  
RAILROAD CO.

Dated: April 26, 2010

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 470X)

BNSF RAILWAY COMPANY---DISCONTINUANCE OF TRackage RIGHTS  
EXEMPTION---IN PEORIA AND TAZEWELL COUNTIES, IL

TOLEDO, PEORIA & WESTERN RAILROAD CO. PETITION FOR LEAVE TO RESPOND

The Toledo, Peoria & Western Railroad Co. ("TP&W") petitions the Surface Transportation Board (the "Board") pursuant to 49 C.F.R. §1117.1 for leave to respond to the Response filed by BNSF Railway Company ("BNSF") on April 14, 2010 (the "Response"), and the Notice of Tazewell & Peoria Railroad, Inc. ("TZPR") to Participate and Request to Accept Late-Filed Reply filed on April 16, 2010 (the "Notice")<sup>1</sup>.

BNSF filed a Petition for Exemption on February 8, 2010 ("Petition") seeking to discontinue use of trackage rights over approximately 3 miles of rail line owned by the Peoria and Pekin Union Railway Company ("P&PU") between Bridge Junction in Peoria and P&PU Junction in East Peoria, in Peoria and Tazewell Counties, IL (the "Line") that connects with the TP&W. TP&W filed a Reply in Opposition on March 29, 2010, as provided for in *BNSF Railway Company-Discontinuance of Trackage Rights Exemption-in Peoria and Tazewell Counties, IL*, STB Docket No. AB-6 (Sub-No. 470X) (SIB served March 8, 2010).

The Petition was filed pursuant to the Board's rules at 49 C.F.R. §1152.60 and 49 C.F.R. §1121. "A party filing a petition for exemption shall provide its case-in-chief, along with its

<sup>1</sup> Contrary to TZPR's argument, 49 C.F.R. §1152.25 only provides a right to participate in application proceedings, and requires timely participation.

supporting evidence, workpapers, and related documents at the time it files its petition.” 49

C.F.R. §1121.3. Had BNSF submitted its case-in-chief and TZPR submitted its support with the Petition consistent with the Board’s rules, TP&W would have had with the opportunity to respond, as provided in the Board’s rules. However, BNSF and TZPR filed responses to TP&W, evidencing a failure on their part to file a “case-in-chief” as required by the Board’s rules.

TP&W respectfully requests that the Board permit it to respond to the Response and the Notice, which TP&W would have been able to do if BNSF and TZPR had complied with the Board’s regulation when the Petition was filed.

Respectfully submitted,

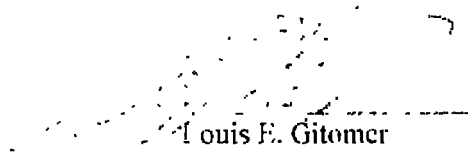
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Dated: April 26, 2010

**CERTIFICATE OF SERVICE**

I, Louis E. Gitomer certify that, on this 26<sup>th</sup> day of April, 2010, I caused a copy of the foregoing document to be served by e-mail on all parties of record in SIB Docket No. AB-6 (Sub-No. 470X).

  
Louis E. Gitomer